

Executive Service Corps of Washington

Financial Fitness for Nonprofits



Tone up your policies!

**Prepare now for
the new 990
forms in 2009**

Sample Policies on

- ✦ **Whistleblowers**
- ✦ **Document Retention**
- ✦ **Conflicts of Interest**
- ✦ **Private Inurements**

Introduction

This document provides four sample financial policies and procedures covering areas that have been added by the IRS to the 990 forms filed annually by most nonprofits. The whistleblower policy should be added to the organization's personnel policies; document retention, conflict of interest, and private inurement policies are elements of the organization's overall financial policies. These sample policies are a starting point. Your organization must consider your specific risks and consistency with other board and operational policies and customize these policies to your organization!

***Disclaimer:* The programs and materials of the Executive Service Corps are designed to provide accurate and authoritative information to nonprofit organizations. These sample policies and procedures are provided as a starting point. However, on matters related to the law, regulatory requirements, tax codes, or accounting standards, the materials, training programs, and consultations provided by Executive Service Corps' volunteer consultants are not a substitute for the services of a competent legal or financial professional who is familiar with your organization.**

Whistleblower Policy & Procedures

Policy:

[Name of Organization] encourages employees, volunteers and others related to the organization to report any violation of policy, procedure, or ethics; illegal activity; or other misconduct by employees, volunteers, or others related to the organization. No person who in good faith reports a violation shall suffer harassment, retaliation or adverse employment consequence. An employee, board member, or volunteer who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment.

Procedures:

Reports can be made directly to the executive director, board chair or vice chair or any special committee constituted by the Board to receive and process such confidential information. To the extent that the activity or misconduct involves the executive director the report should be made directly to the board chair or vice chair.

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

The recipient of a complaint will notify the sender and acknowledge receipt of the reported violation or misconduct within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

Document Retention Policy & Procedures

Policy:

All short term and long term storage of administrative and financial records are provided in a safe, secure and confidential manner. Depending upon the type of record, the appropriate length of time for retention complies with legal and funder requirements. Records relevant to

foreseeable or pending judicial or administrative investigations or proceedings are preserved until the actions are concluded.

Procedures:

Physical Records: At least annually, physical document and files are transferred from active files to inactive storage and retention dates are noted on the files. Confidential files are clearly designated as such. Files in storage are placed in a fire resistant, secure, dry place.

When Files are past retention requirements, documents shall be destroyed in a method that maintains confidentiality (i.e. shredding). Do not place in dumpsters.

Long term storage of electronic records: All electronic files are backed up daily. Backups are moved off-site monthly. The retention periods are consistent with those for physical records.

The following table provides the minimum requirements. This information is provided as guidance in determining your organization’s document retention policy.

Type of Document	Minimum Requirement
Accounts payable ledgers and schedules	7 years
Audit reports	Permanently
Bank Reconciliations	2 years
Bank statements	3 years
Checks (for important payments and purchases)	Permanently
Contracts, mortgages, notes and leases (expired)	7 years
Contracts (still in effect)	Permanently
Correspondence (general)	2 years
Correspondence (legal and important matters)	Permanently
Correspondence (with customers and vendors)	2 years
Deeds, mortgages, and bills of sale	Permanently
Depreciation Schedules	Permanently
Duplicate deposit slips	2 years
Employment applications	3 years
Expense Analyses/expense distribution schedules	7 years
Year End Financial Statements	Permanently
Insurance Policies (expired)	3 years
Insurance records, current accident reports, claims, policies, etc.	Permanently
Internal audit reports	3 years
Inventories of products, materials, and supplies	7 years
Invoices (to customers, from vendors)	7 years
Minute books, bylaws and charter	Permanently
Patents and related Papers	Permanently
Payroll records and summaries	7 years
Personnel files (terminated employees)	7 years
Retirement and pension records	Permanently
Tax returns and worksheets	Permanently
Timesheets	7 years
Trademark registrations and copyrights	Permanently
Withholding tax statements	7 years

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Conflict of Interest Procedures

Note: These policies seem very long and detailed but they provide an effective structure for ensuring that the organization remains attentive to conflicts of interest that may arise. The requirement that board members and the executive director make annual declarations allows organizations to be consistently monitoring conflicts and this improves the chances that a conflict is identified and resolved successfully before damage is done to the organization's reputation and relationship with donors.

INTENT

Conflict of interest arises whenever the personal or professional interests of a board member, the executive director, or other management staff are potentially at odds with the best interests of the organization.

Potential conflicts are common. For example, a board member performs professional services for an organization, or proposes that a relative or friend be considered for a staff position. Such transactions are perfectly acceptable if they benefit the organization and if the board made the decisions in an objective and informed manner. Even if they do not meet these standards, such transactions are usually not illegal. They are, however, vulnerable to legal challenges and public misunderstanding.

Loss of public confidence and a damaged reputation are the most likely results of a poorly managed conflict of interest. Because public confidence is important to [Name of Organization] the organization should avoid even the appearance of impropriety.

[Name of Organization] has taken the following steps:

- Language regarding conflict of interest is included in the Board Members' Code of Conduct, which limits business transactions with board members, the executive director and management staff and requires a process for disclosure of potential conflicts. The policy requires board members to abstain from decisions that present a potential conflict.
- The organization has a disclosure procedure that a board member, the executive director, or a consultant/volunteer may utilize to disclose any issue that may constitute a potential conflict of interest.
- The organization has a process for deciding whether a potential conflict is, in fact, a conflict.
- The executive director will establish procedures, such as program policies, competitive bids, and formal hiring practices, which ensure that the organization is acting without any conflicts of interest.

[Name of Organization]
CONFLICT OF INTEREST DISCLOSURE PROCEDURES

I. Application of Policy

This policy is intended to supplement, but not replace, federal and state laws governing conflicts of interest applicable to nonprofit corporations. It applies to board members, the executive director, and management staff, as well as their relatives and associates, and to who are hereinafter referred to as "interested parties."

II. Definition of Conflict of Interest

A conflict of interest may exist when the interests or concerns of an interested party may be seen as competing with the interests or concerns of [Name of Organization]. The variety of situations that raise conflict of interest concerns include, but are not limited to, the following:

A. Financial Interests - A conflict may exist where an interested party directly or indirectly benefits or profits as a result of a decision, policy or transaction made by [Name of Organization]. Examples include situations where:

- [Name of Organization] contracts to purchase/lease goods, services, or property from an interested party.
- [Name of Organization] offers employment to an interested party, other than a person who is already employed by [Name of Organization].
- An interested party uses their relationship with an [Name of Organization] client to obtain employment, a contract or other benefit.
- An interested party is provided use of the facilities, property, or services of [Name of Organization] in a manner that would not be available to other community members.
- [Name of Organization] adopts a policy that specifically creates a financial benefit to an interested party.

A financial interest is not necessarily a conflict of interest. A conflict of interest exists only when the board decides that a person with a financial interest has a conflict of interest.

B. Other Interests - A conflict also may exist where an interested party obtains a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with [Name of Organization]. Examples include where:

- An interested party seeks to make use of confidential information obtained from [Name of Organization] or an [Name of Organization] client for his/her own benefit (not necessarily financial).
- [Name of Organization] adopts a policy that provides a significant nonfinancial benefit to an interested party.

A conflict of interest exists only when the Board of Directors decides there is a conflict.

III. Disclosure of Potential Conflicts of Interest

An interested party is under a continuing obligation to disclose any potential conflict of interest as soon as it is known or reasonably should be known.

- Board members and the executive director complete an Affirmation of Compliance form (Appendix B) when they join the board or staff and annually thereafter.
- Any interested party completes the Disclosure of Potential Conflict of Interest Statement (Appendix A) to disclose any potential conflicts of interest.

Disclosure Statements and Affirmations of Compliance will be submitted as follows:

- For board members, the disclosure statements will be provided to the board chair.
- The chair's disclosure statement shall be provided to the secretary of the board.
- In the case of staff and consultants/volunteers, the disclosure statements shall be provided to the executive director.
- In the case of the executive director, the disclosure statement shall be provided to the chair of the board.

The secretary of the board or the person designated by the board as the reviewing official is responsible for bringing potential conflicts to the attention of the board or the executive director. The secretary of the board shall file copies of all disclosure statements with the official corporate records of [Name of Organization].

IV. Procedures for Review of Potential Conflicts

Whenever there is reason to believe that a potential conflict of interest exists between [Name of Organization] and a board member or the executive director, the board shall determine the appropriate response. The designated reviewing official has a responsibility to bring a potential conflict of interest to the attention of the board for action at the next regular meeting of the board or during a special meeting called specifically to review the potential conflict of interest. [Name of Organization] shall refrain from acting until such time as the proposed action, policy or transaction has been approved by the disinterested members of the board.

Whenever there is reason to believe that a potential conflict of interest exists between [Name of Organization] and a consultant/volunteer, the executive director shall determine the appropriate response. The executive director shall report to the board chair the results of any review and the action taken. The chair shall determine whether any further board review or action is required.

V. Procedures for Addressing Conflicts of Interest

The following procedures shall apply:

1. An interested party who has a potential conflict of interest with respect to a proposed action, policy or transaction of the corporation shall not participate in any way in, or be present during, the deliberations and decision-making vote of [Name of Organization]. However, the interested party shall have an opportunity to provide factual information about the proposed conflict and/or action, policy or transaction. Also, the board may request that the interested party be available to answer questions.
2. The disinterested members of the board may approve the proposed action, policy or transaction upon finding that it is in the best interests of [Name of Organization]. The board shall consider whether the terms of the proposed action, transaction or policy are fair and reasonable to [Name of Organization] and whether it would be possible, with reasonable effort, to find a more advantageous arrangement with a disinterested party.
3. Approval by the disinterested members of the board shall be by vote of a majority of directors in attendance at a meeting at which a quorum is present. An interested party

shall not be counted for purposes of determining whether a quorum is present, or for purposes of determining what constitutes a majority vote of directors in attendance.

4. The minutes of the meeting shall reflect that the conflict disclosure was made to the board, the vote taken and, where applicable, the abstention from voting and participation by the interested party. Whenever possible, the minutes should frame the decision of the board in such a way to provide guidance for consideration of future conflict of interest situations.

VI. Violations of Conflict of Interest Policy

If the board or executive director (for staff /volunteers) has reason to believe that an interested party has failed to disclose a potential conflict of interest, it shall inform the person of the basis for such belief and allow the person an opportunity to explain the alleged failure to disclose.

If the board or executive director (for staff/volunteers) decides that the interested party has in fact failed to disclose a possible conflict of interest, the board shall take such disciplinary and corrective action as the board shall determine.

Appendix A

[Name of Organization]
Potential Conflict of Interest Disclosure Statement

Please complete the questionnaire below, indicating any potential conflicts of interest. If you answer "yes" to any of the questions, please provide a written description of the details of the specific action, policy or transaction in the space allowed. Attach additional sheets as needed.

A conflict may exist where an interested party directly or indirectly benefits or profits as a result of a decision, policy or transaction made by [Name of Organization]. The interested party would not have obtained this benefit were it not for his/her relationship with [Name of Organization].

- Has [Name of Organization] proposed to contract or contracted to purchase or lease goods, services, or property from you or from any of your relatives or associates?
- Board members/ED only: Has [Name of Organization] offered employment to you or to any of your relatives or associates?
- Have you used your relationship with [Name of Organization] to obtain a contract, employment for yourself or any of your relatives or associates, from a person or entity that does business with [Name of Organization]?
- Have you or any of your relatives been provided use of the facilities, property, or services of [Name of Organization] in a way that is not available to others who benefit from the organization's services?
- Have you, a relative or an associate been in a position to benefit financially from an action, policy or transaction made by [Name of Organization]?
- Other issues or situations not addressed above _____

Name (Please print)

Signature

Date

Appendix B

Conflict of Interest Affirmation of Compliance

I have received and carefully read the Conflict of Interest Policy for board members, the executive director and managers. I have considered not only the literal expression of the policy, but also its intent. By signing this affirmation of compliance, I hereby affirm that I understand and agree to comply with the Conflict of Interest Policy. I further understand that [Name of Organization] is a nonprofit organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes without personal inurement or benefit by board members., consultants/volunteers or staff (other than by salary).

I hereby state that I do not have any conflict of interest, financial or otherwise that may be seen as competing with the interests of [Name of Organization], nor does any relative or associate have such a potential conflict of interest.

If any situation should arise in the future that I think may involve me in a conflict of interest, I will promptly and fully disclose in writing the circumstances to the Chair of the Board of Directors or to the Executive Director, as applicable.

I further certify that the information set forth in the Disclosure Statement and attachments, if any, is true and correct to the best of my knowledge, information and belief.

Name (Please print) _____

Signature _____

Date _____

Annual Review and Reaffirmation

Signature _____

Date _____

Signature _____

Date _____

Signature _____

Date _____

Private Inurements Policy

Introduction

Non-profit charitable, religious, and educational organizations obtain their tax-exempt status under the theory that they perform valuable services for society and lessen the burdens of government. If a tax-exempt organization allows its money or other property to be used for private rather than public gain (i.e., for "private inurement" or "private benefit"), then it risks losing its exemption. In addition, under recently adopted "intermediate sanctions" provisions of the Internal Revenue Code, "disqualified persons" such as CEOs, CFOs, board members, major donors doing work for the exempt organization, etc., who receive "excess benefits" are subject to an excise tax ranging from 25% to 200%, depending on the circumstances. Furthermore, any organizational manager who knowingly facilitates such an excess benefit is subject to a 10% tax.

What is Private Inurement or Private Benefit?

"Private inurement" is the payment or diversion of an exempt organization's assets to its officers, directors, employees, relatives, friends, major donors, or others in a special relationship to the organization who can influence or control the policy or the day-to-day activities of the organization for less than full and adequate consideration.

Private inurement also extends to the use of organizational assets for "private benefits" such as sales, leasing, construction contracts, service transactions, etc., at other than fair market value or the exploitation of the exempt organization for the benefit of a private business (e.g., "sweetheart deals," promotional schemes, and/or giveaways to private individuals or businesses).

Policy

The purpose of this private inurements policy is to ensure that [Name of Organization] is fulfilling its responsibilities to act as a competent and trustworthy steward of its resources and is behaving in a way that is consistent with the following IRS requirement:

A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may inure to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.

To avoid the conferment of material private inurements or benefits in the types of transactions described above, the organization will enter into transactions solely to benefit the charitable purposes of the organization, rather than for a private party's benefit. The organization will exercise due diligence to ensure that any proposed transaction is fair and reasonable. This means that the organization could not have obtained a more advantageous arrangement with reasonable effort.

The organization will ensure that the intent of this policy is carried out by:

- Screening proposed transactions through the applicable boards, advisory boards, and committees, and other processes set out in the organization's procedures

- Taking care that organizational policies and procedures pertaining to the signing of contracts are followed. (For example, the board may require contracts in excess of a certain amount or duration to be executed by the board rather than the executive director.)
- Putting in place additional procedures that may apply in connection with contract bids for building construction, renovation and repair projects.



**Need additional assistance?
Contact Executive Service Corps
Financial Fitness for Nonprofits Program**

Financial Fitness Assessment

ESC's Financial Fitness Assessment evaluates your organization's current financial management processes in 22 areas. The assessment can be completed as a stand-alone project, or as part of another FFNP service. The assessment is done at the beginning and end of a project, tracking your organization's development.

Financial Policies and Procedures

After this two-hour session, your organization will have a model set of policies and procedures to customized as needed, a glossary of key financial terms, and an understanding of the importance of establishing a management culture for good internal controls. This session should be attended by the executive director, key financial staff, and the board treasurer.

Contracted Management Assistance

Need an expert for an in-depth consultation? Consultants can help with specific issues such as:

- Review of financial statements and procedures in preparation for an audit or financial review
- Developing tools to monitor financial performance
- Review of staffing plans for financial services

Financial Fitness for Boards

This presentation, delivered at a board meeting or retreat, ensures that the full board has a solid understanding of its fiduciary role. Using your organization's own financial statements, the session focuses on the board's role in budgeting, financial reports, internal controls, audits/reviews, and financial policies, including conflict of interest and whistleblower policies.

Quick Consults

Ever have a quick question for a financial expert? This valuable resource provides affordable and fast advice on common financial issues. Quick Consults are designed for issues that can be researched and answered within two hours. Communication for Quick Consults is usually by phone or email. ESC does not provide investment advices, validate the accuracy of financial statements, or make personnel recommendations.

Financial Fitness Information Sessions

These special topic sessions are customized for your organization. Current topics include:

- Introduction to Nonprofit Financial Management
- Applying for a Bank Loan or Line of Credit
- Developing a Business Plan
- Assessing Readiness for a Capital Campaign (developed for ESC by The Collins Group)

Service grants for a portion of the cost of programs and consultations are available, thanks to the support of community funders including the Bullitt, Russell Family, Lucky Seven, Norcliffe and Seattle Foundations, and The Boeing Company.

Many services can be provided through videoconference/teleconference and the program is offered by some ESCs in areas outside of the Northwest. Contact Katie at 206-682-6704 for more information.